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No. 82-1724

IN THE

# Supreme Court of the United States

October Term, 1983

STATE OF NEW YORK,

*Petitioner.*

vs.

ROBERT UPLINGER,

*Respondent.*

On Writ of Certiorari to the  
New York State Court of Appeals.

Response of Amici National Association of Business  
Councils, et al. to Petitioner's Objection to Motion  
of Said Amici to File Brief Amici Curiae.

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## Response of Amici National Association of Business Councils, et al. to Petitioner's Objection to Motion of Said Amici to File Brief Amici Curiae.

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*Amici* herein hereby respectfully file their response to Petitioner's objection to the motion made by the said *amici* --- the National Association of Business Councils, the Federation of Parents and Friends of Lesbians and Gays, Lesbian and Gay Interfaith Alliance, National Gay Rights Advocates, Lawyers for Human Rights, Midge Costanza, Evelyn Hooker, Ph.D., Wardell B. Pomeroy, Ph.D., Joseph LoPiccolo, Ph.D., Bruce Voeller, Ph.D., Alvin F. Poussaint, M.D., Margaret Lawrence, M.D., Sol Gordon, David McWhirter, M.D., and Michael Carrera, Ph.D. — for leave to file a brief *amicus curiae*.

The response of *amici* to the said objection is threefold. First, the interest of the *amici* goes beyond that stated by the said objection. Clearly, the interest is appropriate and

the brief proffered is relevant and informative if this Court chooses to review the issues decided in *People v. Onofre*, 51 N.Y.2d 476, 434 N.Y.S.2d 947, 415 N.E.2d 936 (1980), *cert. denied*, 451 U.S. 987 (1981), which this Court might do. Just as clearly, *amici* are interested not only in the legality of private, non-commercial consensual sodomy, but also in the legality of the loitering statute of this case, because the *Onofre* interests mentioned above and in the said brief *amicus curiae* are greatly affected by a statute which nips *Onofre* rights in the bud.

Second, if Petitioner is correct in his assertion that the present case does not involve *Onofre* issues, then there are no constitutional issues before this Court, because the New York Court of Appeals specified none. The said brief *amicus curiae* shows that the Court of Appeals decision rested on statutory construction, not the federal Constitution. If the Court sustains the objection of the Petitioner because it has chosen not to review the constitutional issues of *Onofre*, then this Court could dismiss the writ of certiorari as improvidently granted even before oral argument, since all that is left in the case is an issue of statutory construction which is beyond the jurisdiction of this Court, as shown in the said brief *amicus curiae*.

Finally, while there may be great redundancy among some of the other briefs filed in the case, this brief discusses concisely an important issue discussed by no other.

For all the foregoing reasons, *amici* herein respectfully request this Court to overrule Petitioner's objection and to grant the motion of the said *amici* for leave to file their brief *amicus curiae*.

Respectfully submitted,

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